IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.11.2007

CORM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Civil Revision Petition (NPD) No.337 of 2006

and CMP.Nos.2596 of 2006, 2660 & 2261/2007

1. Sheik Allaudin
2. Asia Natchialle
3. Mohammed Mustafa .. Petitioners / Proposed Respondent

Vs.

Annibal Thamilarasi Jesintha

.. Respondent/ Petitioner

Civil Revision Petition filed under section 25 of the Pondicherry Buildings (Lease and Rent Control) Act, 1969, against the order dated 6.9.2005 passed in E.A.No.145 of 2003 in R.C.E.P.No.16 of 2003 in HRCOP No.17 of 1999 on the file of the Principal District Munsif-cum-Rent Controller, Pondicherry.

For petitioner : Mr. T.P.Manoharan

For respondent : M/s.R.Subramanian & M.Sudhakar

ORDER

The proposed parties who are third parties to the rent control and execution proceedings are the revision petitioners in this revision.

2. This revision petition is directed against the order of the learned Rent Controller, Pondicherry dated 6.9.2005 passed in E.A.No.145 of 2003 in RCEP.No.16 of 2003 in HRCOP No.17 of 1999. The respondent herein has filed the rent control petition in HRCOP. No.17 of 1999 against one Marie Louis Saint John for eviction on the ground of willful default in payment of rent and eviction order was passed on 3.10.2001 by the learned Rent Controller/Principal District Munsif, Pondicherry which was confirmed by the learned Chief Judicial Magistrate-cum-Additional District Judge, Pondicherry in R.C.A.No.46 of 2001 by judgment dated 3.1.2003. It is stated that the order of eviction has become final. The

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respondent/landlady has filed E.P.No.16 of 2003 against the original tenant in March, 2003. It is stated that subsequently, the original tenant who was unmarried and who suffered the decree of eviction died on 14.7.2003. The respondent/landlady filed E.A.No.145 of 2003 to implead the revision petitioners as respondents 2 to 4 in the execution petition. The said petition was filed by the respondent/landlady on the basis that even though the original tenant who was unmarried and issueless died on 14.7.2003, the tenant was being accompanied by the proposed parties who are the revision petitioners during the period of litigation. It is also the case of the landlady that the third proposed party, Mohammed Musthafa had participated in the rent control proceedings as power agent of the original tenant, Marie Louis Saint John and the proposed parties are to be impleaded on the basis that they are in physical possession of the premises without any right to occupy, for the purpose of completing the execution proceedings.

3. The learned Rent Controller has allowed the said petition against which the third parties have filed the present revision. The reasons adduced by the revision petitioners for assailing the order of the learned Rent Controller are that the revision petitioners are in occupation and enjoyment of the house under one Marie Louis Saint Simon who has the right of interest over the premises and they had no connection with Marie Louis Saint John against whom the eviction order has been passed. It is the further ground of the revision petitioners that section 50 of the Code of Civil Procedure would apply only in respect of the legal representatives of judgment debtors and therefore, taking advantage of the order of eviction against the tenant, the revision petitioners cannot be disturbed. The further ground raised in the revision is that the remedy open to the respondent is to file a suit against Marie Louis Saint Simon for partition of the half share in the house. Further, it is the case of the revision petitioners that the respondent has not deliberately impleaded the two male issues of Marie Louis Saint Simon by name Thomas Jacques Michel Marie Louis and Jerome Philippe Mathieu Marie Louis, who are the absolute owners of the property in question and therefore, the finding of the Rent Controller and the consequential eviction order passed would not in any way affect the right, title or possession of the said Marie Louis Saint Simon and his male descendants under whom the revision petitioners claim to be the tenants.

4. I have heard the learned counsel for the petitioners as well as the respondent.

5. It is seen that in the execution application, the respondent/landlady was examined as P.W.1 and the third petitioner herein was examined as D.W.1 and various documents were marked on the side of the respondent as Exs.P-1 to P-18 and on the side of the revision petitioners as Exs.R-1 to R-8. The learned Rent Controller has found on fact that the order of eviction, which has

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become final, was passed against the original tenant, by name, Marie Louis Saint John and he was married to the second revision petitioner as per Ex.P-1, marriage certificate. The Rent Controller has also found that as evident from Exs.P-2 to P-6 the third revision petitioner was the power of attorney agent of the original tenant. The Rent Controller has found that the third revision petitioner who was examined as R.W.1 has clearly admitted that there is no proof to show that Marie Louis Saint Simon is living in France and he, claiming to be his power agent, has not filed any suit for declaration that the said Marie Louis Saint Simon is entitled to the property and not Marie Louis Saint John, who was the original tenant. In fact, after discussing the entire evidence, the learned Rent Controller has come to the conclusion, correctly in my opinion, that he need not go into the right of Marie Louis Saint Simon over the premises in question since the proceedings are only at the stage of impleading parties. The Rent Controller has found, placing reliance on the judgment of this Court in Balasubramanya Gupta vs. Saraswathi Ammal and others (2005(2) LW 450), that the term tenant in respect of non-residential building includes a person living with the tenant as a member of the tenant's family upto the death of the tenant and therefore held that it is not necessary for a 'tenant' to claim to be a legal heir of the deceased tenant and it is enough that he had been in continuous association of the deceased tenant and in such case, he can be termed as legal representative of the deceased tenant, which cannot be equated with the term, legal heir. It is not in dispute that the third revision petitioner is having a Sangam in one portion of the E.P. schedule mentioned property for the welfare of the French Citizens and therefore, it is a non-residential building and as a legal representatives of the deceased tenant, the impleadment of the revision petitioners is not either illegal or irregular. In view of the same, I do not see any irregularity or illegality in the findings arrived at by the learned Rent Controller that the revision petitioners are the necessary parties to the execution proceedings.

Accordingly, the C.R.P. fails and the same is dismissed. No costs. Connected miscellaneous petitions are closed.

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Asst. Registrar.

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Sub Asst. Registrar.

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To

The Rent Controller/
Prl.District Munsif
Pondicherry.

2 ccs to Mr.R. Subramanian, Advocate, SR. 66647

C.R.P.(NPD)No.337 of 2006

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